

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HARLIS WOODS,

Plaintiff,

v.

DONALD GAETZ, *et al.*,

Defendants.

Case No. 10-cv-870-JPG

**MEMORANDUM AND ORDER**

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 189) of Magistrate Judge Philip M. Frazier recommending that the Court deny the motion for summary judgment filed by defendants Donald Gaetz, Joe Durham, Sean Wolters, Jimmy Ryan, Timothy Roy, Shawn Heuer, Michael Baker, Virgil Smith and Matthew Colvis (Doc. 156) and deem certain facts established for trial purposes pursuant to Federal Rule of Civil Procedure 56(g). The defendants object to the Report (Doc. 190).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The defendants object only to the Report’s recommendation to deem certain facts established for the purposes of trial. It appears that the recommendation to deem the facts established was based on the undisputed material facts set forth in the defendants’ memorandum in support of their motion for summary judgment. In their objection, they represent that those

facts were stated, as appropriate at the summary judgment stage, in the plaintiff's favor and did not include contrary evidence that the defendants would produce at trial. Indeed, the plaintiff's deposition was cited as the sole evidentiary support for all but one fact statement. The Court believes it is inappropriate to deem the defendants' statement of the evidence as viewed in the plaintiff's favor as established for the purposes of trial. Accordingly, the Court will reject that portion of the Report. Nevertheless, the Court encourages the parties to make a good faith effort to reach agreement on the facts in the proposed final pretrial order.

The Court has reviewed the remainder of the Report for clear error and has found none. Therefore, the Court will adopt the remainder of the Report.

For the foregoing reasons, the Court hereby:

- **ADOPTS in part** and **REJECTS in part** the Report (Doc. 189); and
- **DENIES** the defendants' motion for summary judgment (Doc. 156).

The Court further **RECONSIDERS** *sua sponte* Woods' motion for appointment of counsel (Doc. 135) and will attempt to recruit counsel for Woods for the purposes of trial. The Court further **ORDERS** the parties to submit a proposed final pretrial order to Magistrate Judge Frazier's chambers on or before May 31, 2013.

**IT IS SO ORDERED.**  
**DATED: April 22, 2013**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**